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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF NEVADA**

16 **FEDERAL TRADE COMMISSION,**

17 Plaintiff,

18 v.

19 **OMICS GROUP INC., et al.,**

20 Defendants.

Case No. 2:16-cv-02022-GMN-VCF

**FTC’S RULE 56(c)(2)  
OBJECTION/MOTION TO  
STRIKE THE DECLARATION  
OF KISHORE VATTIKOTI**

21  
22 Plaintiff Federal Trade Commission (“FTC”) hereby objects, pursuant to Federal Rule of  
23 Civil Procedure 56(c)(2), to the Declaration of Kishore Vattikoti submitted in support of  
24 Defendants’ motion for summary judgment. ([ECF No. 89-3.](#)) This declaration should not be  
considered because it does not comply with Federal Rule of Civil Procedure 56(c)(4)’s mandate

1 that declarations used to support or oppose summary judgment motions “must be made on  
 2 personal knowledge, set out facts that would be admissible in evidence, and show that the affiant  
 3 or declarant is competent to testify on the matters stated.” The Advisory Committee Notes  
 4 specify that Rule 56(c)(2) objections “function much as an objection at trial . . . . The burden is  
 5 on the proponent to show that the material is admissible as presented.” Fed. R. Civ. P. 56(c)(2),  
 6 Advisory Committee Notes, 2010 Amendments; *FTC v. AMG Servs.*, 2014 U.S. Dist. LEXIS  
 7 10240, at\*35 (D. Nev. Jan. 28, 2014).

8 To comply with Rule 56(c)(4)’s requirements, a declaration must include “specific facts”  
 9 that affirmatively show that the declarant has personal knowledge and is competent to testify.  
 10 *Shakur v. Schriro*, 514 F.3d 878, 890 (9th Cir. 2008). “Conclusory affidavits that do not  
 11 affirmatively show personal knowledge of specific facts are insufficient.” *Casey v. Lewis*, 4 F.3d  
 12 1516, 1527 (9th Cir.1993). The declaration must describe how the declarant became aware of  
 13 the facts recited with sufficient detail to establish a foundation for admissibility. *Intermountain*  
 14 *Fair Hous. Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 998 (9th Cir. 2011).  
 15 Declarations that merely state that a witness is aware of certain facts have repeatedly been  
 16 rejected because they fail identify the source of the witness’s knowledge and demonstrate that  
 17 the witness’s statements are admissible. *See, e.g., Shakur*, 514 F.3d at 890; *Ward v. First*  
 18 *Federal Savings Bank*, 173 F.3d 611, 617-18 (7th Cir.1999); *Garcia v. Wal-Mart Stores Inc.*, 207  
 19 F. Supp. 3d 1114, 1121 (C.D. Cal. 2016)

20 Paragraphs 6-11 of the Vattikoti Declaration do not satisfy Rule 56(c)(4)’s requirements.  
 21 These paragraphs contain sweeping statements about Defendants’ activities publishing journals,  
 22 organizing conferences, advertising article charges, and resolving complaints concerning both  
 23 conferences and publication charges. (ECF No. 89-3 at 2-3.) The declaration is ambiguous  
 24 regarding the time period for these general statements but appears to cover activities since at  
 least 2012. (*Id.* at 1 ¶ 3.) However, according to the testimony of Defendant Gedela in this

1 action, the responsibilities of the declarant, Kishore Vattikoti, are limited to helping Defendants  
2 with the FTC investigation and enforcement action. (Ex. 1 at 13 (lines 110:5-17), 15 (lines  
3 112:1-7).) He is not a corporate officer, a manager of business operations, or a general legal  
4 counsel, and he began his service around 2014. (*Id.* at 12 (lines 109:9-16).)

5 The Vattikoti Declaration does not provide any details regarding the sources of his  
6 statements, does not demonstrate that these unidentified sources would be admissible, and does  
7 not provide specific facts showing that he is competent to testify comprehensively regarding all  
8 Defendants' solicitations, advertising and responses to complaints. Accordingly, the Vattikoli  
9 Declaration should be disregarded in connection with summary judgment.

1 Dated: May 22, 2018

Respectfully submitted,

2 ALDEN F. ABBOTT  
General Counsel

3  
4 /s/ Michael E. Tankersley  
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16 FEDERAL TRADE COMMISSION

17  
18 **CERTIFICATE OF SERVICE**

19 The undersigned hereby certifies that on May 22, 2018, a true and correct copy of **FTC'S**  
**RULE 56(c)(2) OBJECTION/MOTION TO STRIKE THE DECLARATION OF**  
20 **KISHORE VATTIKOTI** was filed electronically with the United States District Court for the  
District of Nevada using the CM/ECF system, which sent notification to all parties of interest  
21 participating in the CM/ECF system.

22 /s/ Michael E. Tankersley  
Attorney for Plaintiff Federal Trade Commission